IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 23405 of 2005(J)

PETITIONER:

NATIONAL DEVELOPMENT FRONT KERALA,
UNITY HOSUE,17/569,RAJAJI ROAD,
KOZHIKODE,REP.BY GENERAL SECRETARY.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS:
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1. STATE OF KERALA TO BE REP.BY
PRINCIPAL SECRETARY,GENERAL ADMINISTRATION
DEPARTPMENT,GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 7-11-2006, THE COURT ON 15-3-2007 DELIVERED THE FOLLOWING:

APPENDIX:

PETITIONER'S EXTS:
EXT.P1: PHOTOCOPY OF THE ORDER DATED 1-7-05 OF THE COMMISSION INQUIRY(MARADU INCIDENTS)KOZHIKODE.

EXT.P2: PHOTOCOPY OF THE NOTICE DATED 4-7-2005 .

EXT.P3: PLHOTOOCPLY O THE REPORT OF NEERA RAWATH MARKED AS eXT.c17 BEFORE MARADU COMMISSIONer
EXT.P4: PHOTOOCPY OF THE REPORT IN HINDU DAILY DATED 14-5-2005

EXT.P5: PHOTOOCPY OF THE REPORT IN INDIAN EXPTRESS DATED 14-5-05.

EXT.P6: PHOTOOCPY OF THE REPRESENTATION TO THE CHIF MINISTER DATED 17-5-2005.
EXT.P7: PHOTOCOPY OF THE INTIMATION FROM THE OFFICER OF THE CHIEF MINISTER DATED 25-5-2005.

RESPONDENTS' EXTS:
EXT.R2(A): A TRUE COPY OF THE ORDER DATED7-8-06.

eXT.R2(B) A TRUE COPY OF THE MEMO DATED 8-8-2006.

EXT.R2(C): A TRUE COPY OF THE REPORT DATED 2-9-2006.

TRUE COPY

P.S.TO JUDGE

ks.

K.R. UDAYABHANU, J.

W.P.(C).NO.23405 OF 2005

DATED THIS THE 15th Day of March 2007

JUDGMENT

The writ petitioner who is the General Secretary of National Development Front, Kerala, a registered organization has sought for a writ directing the respondent, i.e. State and the Director General of Police to order an investigation into the leaking of Ext.P3 confidential report of Special Branch to Kummanam Rajasekharan, Convener of Hindu Aikya Vedi. It is the case of the writ petitioner that during the enquiry by the Marad Commission with respect to the communal flair up that took place on 2-5-2003 resulting in the death of nine persons, the alleged role of the organization represented by the writ petitioner was also a subject of reference and during the enquiry, that Sri. Kummanam Rajasekharan, the Convener of Hindu Aikya Vedi has deposed that then Commissioner of Police, Mrs.Neera Rawath had submitted a report to the Government with respect to the activities of the petitioner organization and that he claimed to have seen the report of Mrs.Neera Rawath and that copy of the

same was furnished to the Commission claiming that he obtained the same from a worker of Hindu Aikya Vedi. As directed by the Commission, the Special Branch, Dy.S.P. produced the copy of the report which was marked as Ext.C.17 through Mrs. Neera Rawath who was examined through video conferencing. He has also mentioned in the report that Iran and ISI of Pakistan are the money sponsoring countries along with Kuwait and Saudi Arabia to the petitioner organization. Photocopy of the report is produced as Ext.P3 herein. The above details were also published in the media. During the examination of Mrs.Neera Rawath, she has mentioned that she had constituted a special squad to assist the Special Branch to collect information about the activities of N.D.F. It was thus that the above special report was furnished which was of a confidential nature . According to the petitioner, the above Special Branch report has been leaked out and reached the hands of Kummanam Rajasekharan. The petitioner had represented to the Chief Minister on 17-5-2005 to conduct a thorough enquiry as to how the report reached

Kummanam Rajasekharan and sought for disciplinary action against Mrs. Neera Rawath and other police officers. It is in the absence of further effective action, the writ petitioner has approached this Court. It is pointed out that the action of leaking out the above document attracted Section 3(c) of the Official Secrets Act, 1923. So also as per Section 5(2) of the Act, any person voluntarily receiving any secret documents knowing or having reasonable ground to believe that it is communicated in contravention of the Act is liable to be punished. As per Section 13(3) of the Act no court shall take cognizance of any offence under the Act unless upon complaint made by order, or under authority from the appropriate Government etc. Rule 56 of the Government Servants Conduct Rules, 1960 inhibits communication of official documents unauthorisedly. Evidently, the report has been leaked out to a non-official by somebody in the police department.

2. Detailed counter statements has been filed as directed by this Court on behalf of the second respondent pointing out in

detail the steps taken by the Government/D.G.P.in this regard. It is submitted that the D.G.P.had ordered an internal enquiry by the Assistant Commissioner of Police, Special Branch, Kozhikode City vide order dated 19-8-2005. Later the order was modified as it was found that an enquiry by a superior officer is required and the Deputy Inspector General of Police, Kannur Range was required to conduct an internal enquiry and furnish a report within two weeks vide order dated 24-8-2005. It is submitted that on the basis of the subsequent order, an interim report was filed suggesting prosecution under the Official Secrets Act. In the final report dated 2-9-2006 the Deputy Inspector General has made it clear that no prosecution can be taken against those concerned under the Official Secrets Act. It is submitted that the finding of the enquiry do not disclose materials for a prosecution under the Official Secrets Act. What is sated in the report of the Special Branch is that N.D.F. which is an organization of a few persons were receiving financial assistance from other sources and sympathizers from Gulf countries. According to the

respondents, the same does not involve any official secret and that the receipt of money from any foreign country or for any other State will not in any way affect the friendly relations of the foreign country with the Government of India. It is also mentioned that there is no statement anywhere that any foreign Government or any other State Government is giving any aid to N.D.F. Some persons from foreign countries or any other State giving financial assistance to N.D.F.will not affect any friendly relations with any other countries. Already steps have been taken to initiate disciplinary proceedings against the officials who are suspected to be responsible for the leakage of Ext.P3 report. He has also produced Ext. R2(a) order with respect to the disciplinary proceedings against one Sub Inspector, A.S.I.of Police, Head Constable and Police Constables numbering 8. It is the laxity on the part of the above said officials that has resulted in the leakage of official documents. Ext.R2(b) is the memo issued to the Assistant Commissioner of Police, who headed the Special Squad and who submitted the report. Ext.R2(c) is the

correspondence from D.I.G.Kannur Range to the Inspector General of Police, North Zone, Kozhikode as to the action taken in this regard. It is reported therein that on the enquiry no evidence is forthcoming to fix responsibility on any person or persons in the matter and has specifically recommended that there is no scope for registering a case against the officials for the offence under the Official Secrets Act and that departmental enquiry would suffice. Counsel for the revision petitioner has relied on the decisions reported in **State of Kerala v. K.Balakrishnan, 1960 K.L.T.661** and **Sama Alina Abdulla v. State of Gujarat, AIR 1996 SC 569** to sustain the contention that the document mentioned in Section 3(1)(c) need not be a secret one for attracting the section.

3. In the instant case, I find that D.G.P. has taken sufficient action in the matter. It is for the State to assess as to the implication of the report of the Special Branch as to the financial aid and as to whether it is likely to affect sovereignty and integrity of India, security of the State or friendly relations

with foreign States. In the absence of any data in the above said report and in view of Ext.R2(c) findings, I find that the direction to register a case and investigate is not called for in the matter. The writ petition is dismissed.

K.R.UDAYABHANU, JUDGE

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